IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

OP.No. 14595 of 2000(K)

PETITIONERS:

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1) K.SREEKUMAR, USHUS,
KAZHAKUTTOM, THIRUVANANTHAPURAM.

2) V.SASIKUMAR, PARATHEEKSHA,
PLANKANDATHIL, VELLOMKETTUVILA,
PRAVACHAMBALAM, THIRUVANANTHAPURAM.

3) D.MADHUSOODHANAN,
KARAKKATTUVILAKATHU VEEDU, NELLIVILA P.O.,
VENNIYOOR, VENGANOOR,
THIRUVANANTHAPURAM.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS:

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1) STATE OF KERALA, REP: BY CHIEF SECRETARY,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2) THE COMMISSIONER OF EXCISE,
THIRUVANANTHAPURAM.

3) THE SUB INSPECTOR OF POLICE,
KOVALAM POLICE STATION,
KOVALAM, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.SALIM P.A.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

Ext.P1: **Copy of the chemical analysis report dtd.5/4/2000 issued by the Joint Chemical Examiner to Government of Kerala.**

Ext.P2: **Copy of the judgment dtd.30/4/1998 in WA.No.825/1998 of this Hon'ble Court.**

Ext.P3: **Copy of the FIR dtd.5/5/2000 filed before the Judl. 1st Class Magistrate Court No.III, Neyyattinkara.**

Ext.P4: **Copy of the order dtd.5/3/1999 in CMP.No.38496/1998 in OP.No.21863/1998 of this Hon'ble Court.**

RESPONDENTS' EXHIBITS:- **Nil.**

(true copy)

P.A. TO JUDGE.

Kvs/-

T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 14595 of 2000-K.

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Dated this the 19th day of October, 2007.

J U D G M E N T

The petitioners are the licencees of toddy shop No.53/1999-2000 situated in Kovalam for the year 1999-2000. On 23-3-2000 the police party represented by the 3rd respondent came to the licenced toddy shop and took samples of toddy and sent it for analysis. Thereafter, as per Ext.P3 they have registered a case against them which is sought to be quashed in this Original Petition. The apparent contention raised is that prior to the year 2000 there was no rule whereby strength of toddy was prescribed.

2. The issue is covered in favour of the petitioner by the judgment of a Division Bench of this Court in OP.No.17172/1999 and that of the same Bench in WA.No.1054/2003 [*State of Kerala v. Unni* (2005(1) KLT 714)]. In the former judgment it was held that prosecution proceedings cannot be sustained in view of the fact that Rule 9 of the Kerala Abkari Shops (Disposal in Auction) Rules, was introduced for the first time only on 1.4.2000 which has got only prospective operation. Prior to that there was no statutory rule fixing the maximum percentage of ethyl alcohol in toddy. Their Lordships quashed the impugned prosecution proceedings therein in the light of the above legal position. In WA.No.65/2005 another Division Bench of this Court

also held that prosecution steps can be initiated only in respect of cases booked on or after 1.4.2000, the date on which the above mentioned rule came into force.

3. Going by Ext.P3 the date of detection is 23.3.2000. Therefore, the case of the petitioners is also covered by the above judgments. Accordingly, the prosecution proceedings against the petitioners as per Ext.P3 in Crime No.43/2000 of the Judicial First Class Magistrate Court-III, Neyyattinkara is quashed, as the same is illegal.

The Original Petition is allowed as above.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-